

### Gujarat HC in Niko's case

In this case, Guj HC in its order dated 16/6/2009 while allowing assessee's writ petition and quashing AO's appeal effect order passed in violation of ITAT order (recently reported at 22 DTR 225), has observed that while giving appeal effect to an ITAT order AO cannot transgress ITAT order stating SC ruling in Goetze is not considered by ITAT by observing that:

"Thus, it is clear that though the claim was allowed by ITAT, Ahmedabad, by the impugned order the authority disallowed the claim virtually setting aside the order of ITAT as if he was sitting in appeal over the order.

In Bhopal Sugar Industries Ltd. vs. Income-Tax Officer, Bhopal, 40 ITR 618, a similar situation arose when Judicial Commissioner took a similar stand, where the Hon'ble Apex Court held that Judicial Commissioner erred in doing.

Further, in relation to filing of appeal on agreed addition, useful reference may be made to latest Third Member Ahd ITAT ruling reported at 123 TTJ 168.